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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/625,878	07/24/2003	Mark Bradford Keener		9290

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BUSKOP LAW GROUP, P.C.  
4511 Dacoma Street  
HOUSTON, TX 77092

EXAMINER

NGUYEN, TAN D

ART UNIT	PAPER NUMBER
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3689

MAIL DATE	DELIVERY MODE
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10/07/2008

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

### Office Action Summary

**Application No.**

10/625,878

**Applicant(s)**

KEENER, MARK BRADFORD

**Examiner**

Tan Dean D. Nguyen

**Art Unit**

3689

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 25 June 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1 and 4-27 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1 and 4-27 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-946)
- 3) ☐ Information Disclosure Statement(s) (PTO/CDC)
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date: \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_
- Paper No(s)/Mail Date: \_\_\_\_\_

**DETAILED ACTION**

***Response to Amendment***

1. The amendment filed on 6/25/08 has been entered. Claims 1, 4-27 are pending and rejected as followed.

As of 6/25/08, claim 1 is as followed:

1. (Currently Amended) A system for identifying relationships between business processes and technology using a protocol to form a dependency and impact hierarchy, wherein the system comprises:

a. a device adapted for manipulating data and programs comprising a processor with data storage;

b. a device adapted for inputting data and programs to the device adapted for manipulating data and programs,

c. a device adapted for viewing data and programs in communication with the device adapted for inputting data and programs;

d. a user input device for input of data and programs from a user;

e. a network in communication with the devices for inputting, viewing and manipulating data and programs; and

f. wherein the device adapted for manipulating data and programs comprises computer instructions for identifying relationships between business processes and technology using a protocol to form a dependency and impact hierarchy, and computer instructions for inputting data and forming in the data storage of the

device for the manipulation of data and programs all of the following:

- i. a business organization object layer;
- ii. a business unit object layer;
- iii. a business process object layer;
- iv. a mechanism object layer;
- v. a client object layer comprising an application user interface executable on  
the a user input device;
- vi. an input device object layer;
- vii. a shared infrastructure services object layer indicating comprising a technical  
service;
- viii. an application object layer;
- ix a shared data storage object layer comprising a shared data storage  
technical infrastructure object;
- x. a server object layer comprising a server technical infrastructure  
component;
- xi. a network object layer comprising a network technical infrastructure  
component;
- xii. a shared network infrastructure object layer comprising an individual network  
object; and

xiii. a security device object layer comprising a security device technical infrastructure component, wherein the object layers are arranged vertically creating vertical dependencies and the object layers are in a constant and static arrangement.

Note: that it appears that independent claim 1 is an apparatus claim. In examination of the apparatus claim, the claims must be structurally distinguishable from the prior art. While features of an apparatus claim may be recited either structurally or functionally, claims directed to an apparatus must be distinguished from the prior art in terms of structure rather than function. See MPEP 2114. *In re Schreiber*, 128 F.3d 1473, 1477-78, 44 USPQ2d 1429, 1431-32 (Fed. Cir. 1997). Apparatus claims cover what a device is, not what a device does. *Hewlett-Packard Co. vs. Bausch & Lomb Inc.* (Fed. Cir. 1990). Manner of operating the device or elements of the device, i.e. recitation with respect to the manner in which a claimed apparatus is intended to be employed/used, does not differentiate apparatus from the prior art apparatus. *Ex parte Masham*, 2 USPQ2d 1647 (BPAI, 1987).

***Claim Rejections - 35 USC § 112***

2. Claims 1, 4-27 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 1, elements (f), sub-elements (i)-(xiii), are vague because it's unclear whether the data/program of (i)-(xii) are being used?

***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

5. **Claims 1, 4-27 are rejected under 35 U.S.C. 103(a) as obvious over ADLER.**

ADLER fairly discloses a system for identifying relationships between business processes and technology using a protocol to form a dependency and impact hierarchy, wherein the system comprises:

a. a device adapted for manipulating data and programs comprising a processor with data storage;

{see Fig. 3 and 3A}

b. a device adapted for inputting data and programs to the device adapted for manipulating data and programs,

{see Fig. 1A, 3 and 3A}

c. a device adapted for viewing data and programs in communication with the device adapted for inputting data and programs;

{see Figs. 1, 1A, 3A and 6}

d. a user input device for input of data and programs from a user;

{see Figs. 1, 1A, 3A}

e. a network in communication with the devices for inputting, viewing and manipulating data and programs; and

{see Figs. 3A, 3, 12, 13 and 16}

f. wherein the device adapted for manipulating data and programs comprises computer instructions for identifying relationships between business processes and technology using a protocol to form a dependency and impact hierarchy, and computer instructions for inputting data and forming in the data storage of the device for the manipulation of data and programs all of the following:

{see Fig. 3, 5A, and 12}

As for the different layers as shown in (i)-(xii), they are not elemental structures or devices or functional elements and thus having no patentable weight in an apparatus claim as indicated above. Moreover, the different layers are shown in Fig. 4, 5A, 12 and 16, pars. 0058-0060. Alternatively, the use of the same business management system/apparatus for identifying relationship of other similar business management processes or enterprises would have been obvious as mere applying the same system to other similar business system.

As for dep. claims 2-27 (part of 1 above), which deal with parameters with respect to hierarchical layers or hierarchical relationship and program files to carry out the object layers, they are not elemental structures or devices or functional elements and thus having no patentable weight in an apparatus claim as indicated above. Moreover, the parameters about the object layers and relationships of the layers are shown in Fig. 7 and 8 and 9. Also, the program files or data files to carry out the apparatus claims are inherently included in the teachings of Fig. 1 of LAKIS. Alternatively, the use of the same business management system/apparatus for identifying relationship of other similar business management processes or enterprises would have been obvious as mere applying the same system to other similar business system.

### ***Response to Arguments***

6. Applicant's arguments with respect to claims 1-24 have been considered but are moot in view of the new ground(s) of rejection which are caused by applicant's amendment of the claims.

### ***Conclusion***

7. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

1) Ann et al, US 2002/0198727, discloses a method and system using an Enterprise Framework, similarly to the scope of the claimed invention and is here for applicant's awareness of potential use in the future if needed to avoid duplicate rejections.



8. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

No claims are allowed.

9. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through private PAIR only. For more information about the PAIR system, see <http://pair-direct@uspto.gov>. Should you have any questions on access to the private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll free).

In receiving an Office Action, it becomes apparent that certain documents are missing, e. g. copies of references, Forms PTO 1449, PTO-892, etc., requests for copies should be directed to Tech Center 3600 Customer Service at (571) 272-3600, or e-mail [CustomerService3600@uspto.gov](mailto:CustomerService3600@uspto.gov).

Any inquiry concerning the merits of the examination of the application should be directed to Dean Tan Nguyen at telephone number (571) 272-6806. My work schedule is normally Monday through Friday from 6:30 am - 4:00 pm. I am scheduled to be off every other Friday.

Should I be unavailable during my normal working hours, my supervisor Janice Mooneyham can be reached at (571) 272-6805.

The main FAX phone numbers for formal communications concerning this application are (571) 273-8300. My personal Fax is (571) 273-6806. Informal communications may be made, following a telephone call to the examiner, by an informal FAX number to be given.

/Tan Dean D. Nguyen/  
Primary Examiner, Art Unit 3689